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6,940,751
6,777,757
6,856,540
6,898,116

RECEIVED
MAY 14 2013
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

6,992,925

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA,

SAN JOSE DIVISION

CV 10-02066

Case No.

COMPLAINT

DEMAND FOR JURY TRIAL

JL

21 KILOPASS TECHNOLOGY, INC., a
22 California Corporation,

23 Plaintiff;

24 v.

25 SIDENSE CORPORATION, a Canadian
26 Corporation,

27 Defendant.

28 Plaintiff Kilopass Technology, Inc. ("Kilopass"), for its Complaint against Defendant Sidense Corporation ("Sidense"), alleges as follows:

29 NATURE OF THE ACTION

30 1. This is an action for patent infringement arising under the Patent Laws of the United

1 States, 35 U.S.C. § 1, *et seq.*

2 **THE PARTIES**

3 2. Plaintiff Kilopass is a California corporation with its principal place of business at
4 3333 Octavius Drive, Santa Clara, California 95054.

5 3. Defendant Sidense is a Canadian corporation with its principal place of business at 84
6 Hines Road, Suite 260, Ottawa, Ontario, Canada, K2K 3G3. Sidense makes, uses, sells, offers for
7 sale, exports and/or imports accused products at issue in this lawsuit into and throughout the United
8 States, including within this District.

9 **JURISDICTION AND VENUE**

10 4. This Court has original subject matter jurisdiction over this action pursuant to the
11 Patent Laws of the United States, 35 U.S.C. § 100 *et seq.*, and 28 U.S.C. § 1338(a).

12 5. Defendant is subject to suit in this State because it has made, used, offered for sale, or
13 sold infringing products in this State.

14 6. Defendant is further subject to suit in this State because, upon information and belief,
15 defendant has purposefully availed itself of the benefits of doing business in California by actually
16 transacting business in this State.

17 7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 (b), (c) and (d) in that
18 defendant has significant contacts with this District through its infringing acts, and defendant is an
19 alien and subject to suit in any district.

20 **FACTUAL BACKGROUND**

21 **Kilopass Establishes eNVM Market**

22 8. Kilopass was founded in 2001 by Jack Peng, an entrepreneur who invented, with
23 others, a novel way of storing data permanently inside integrated circuits ("IC") by creating a
24 breakdown in the transistor, safely and reliably, now referred to as embedded Non-Volatile Memory
25 ("eNVM").

26 9. Peng's discovery was compelling and attracted tier-one investors from all over the
27 world. After intense due diligence these investors committed \$35M in equity and debt investment for
28 the company's growth.

1 10. Kilopass has invested heavily in research and development, applying for over
2 50 patents and having thus far received over 40 issued patents worldwide since 2001.

3 11. Kilopass' patents cover several different architectures of eNVM, ranging from one-
4 transistor (1T), two-transistors (2T), to three and a half (3.5T) transistors.

5 12. To validate these technologies, Kilopass has performed more than thirty different
6 qualification projects in partnership with worldwide semiconductor manufacturing foundries,
7 including Taiwan Semiconductor Manufacturing Corporation ("TSMC"), Dongbu, Global Foundries,
8 Hynix, IBM, Samsung, Semiconductor Manufacturing International Corporation (SMIC), and United
9 Microelectronics Corporation ("UMC").

10 13. Each qualification project was lengthy and resource intensive, often involving three
11 different lots of manufacturing and long hours of high-temperature testing to validate the Kilopass
12 technology.

13 14. At the same time, Kilopass embarked on building a worldwide presence in sales,
14 marketing, and support in order to attract licensees for its eNVM technologies.

15 15. To date, Kilopass has garnered more than 80 licensees, with almost 200 projects either
16 on-going or in production, resulting in more than half a million wafers produced over the period, and
17 an estimated two billion chips used in electronics equipment.

18 16. Kilopass' customers include the two leading semiconductor companies in the world.

19 17. As the pioneer in eNVM technology and pertinent to the technology involved in this
20 lawsuit, Kilopass has been granted five 1T patents: 6,777,757; 6,856,540; 6,898,116; 6,940,751; and
21 6,992,925.

22 **Sidense's Copying Conduct**

23 18. Upon information and belief, Sidense has knowingly copied Kilopass' patented
24 technology and has been selling and offering for sale Kilopass' patented technology without
25 authorization from Kilopass.

26 19. As with any emerging market, the initial pioneering tasks for Kilopass were long,
27 difficult, and often challenged by skeptical customers worried about the viability of the technology
28 and the market acceptance of this new memory storage method.

20. After nine years of diligent effort, Kilopass succeeded in creating a viable eNVM market.

21. Upon information and belief, Sidense saw the market created by Kilopass and set upon a course to take as much of Kilopass' patented business as Sidense could. In doing so, Sidense took full advantage of Kilopass' hard fought, market building efforts by riding behind Kilopass' validation efforts and successes.

22. Upon information and belief, by copying Kilopass Sidense was able to sidestep all the rigors and efforts expended by Kilopass to validate the technology. Because of the proven success of Kilopass, Sidense was able to market directly to Kilopass customers and prospective customers, as if its copy of the Kilopass patented technology had undergone the same qualification process.

23. Upon information and belief, Sidense has received Canadian government subsidies to substantially lower its costs, which further enabled it to offer Kilopass' technology at prices substantially below market value, thus causing further injury to Kilopass in the way of price erosion.

24. Through Kilopass' extensive efforts, Kilopass now enjoys a substantial reputation for its innovations and market building efforts. Upon information and belief, to further leverage transactions at the expense of Kilopass' reputation and goodwill, Sidense has been sowing deceit in the marketplace. For example, knowing fully of Kilopass' patent rights, Sidense has falsely alleged in the marketplace statements to the effect that Kilopass has no intellectual property issues with Sidense. Nothing could be further from the truth. The intent behind this deceitful conduct is to create an impression that Kilopass authorizes Sidense's illegal products.

25. Sidense's illegal copying and associated conduct, as set forth hereinabove, is wanton, willful, malicious and outrageous making this an exceptional case.

CAUSE OF ACTION

INFRINGEMENT OF U.S. PATENT NO. 6,940,751

26. Kilopass realleges and incorporates by reference paragraphs 1-25 above, as if fully set forth herein.

27. Kilopass is the owner by assignment of United States Patent No. 6,940,751 (the “’751 patent”). The ‘751 patent was duly and legally issued by the United States Patent and Trademark

Office on September 6, 2005. A true and correct copy of the '751 patent is attached as Exhibit A.

28. Sidense has infringed and continues to infringe the '751 patent by its active manufacture, use, sale, offer for sale, export and/or import of 1T eNVM technology. Sidense is liable for its infringement of the '751 patent pursuant to 35 U.S.C. § 271.

29. Sidense's acts of infringement have caused damage to Kilopass, and Kilopass is entitled to recover from Sidense the damages sustained by it as a result of Sidense's wrongful acts in an amount subject to proof at trial. Sidense's infringement of the exclusive rights of Kilopass under the '751 patent will continue to damage Kilopass, causing irreparable harm for which there is no adequate remedy at law, unless permanently enjoined by this Court.

30. Sidense committed its infringing acts with actual notice of the '751 patent and has continued and is continuing its infringing conduct nonetheless.

31. Upon information and belief, Sidense's infringement of the '751 patent is willful and deliberate, and without a reasonable basis for believing that its conduct is or was lawful. Therefore, this is an exceptional case and Kilopass is entitled to enhanced damages under 35 U.S.C. § 284 and to attorney's fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Kilopass respectfully requests that this Court enter judgment in its favor and grant the following relief:

1. Hold that Sidense has infringed the '751 patent;
2. Permanently enjoin and restrain Sidense, its employees and agents, and any other person(s) in active concert or participation with it from further infringement of the '751 patent;
3. Hold that Sidense has willfully infringed the '751 patent;
4. Award Kilopass damages under 35 U.S.C. § 284, including treble damages for willful infringement as provided by 35 U.S.C. § 284, prejudgment interest;
5. Hold that this is an exceptional case and award Kilopass' attorneys' fees, as provided by 35 U.S.C. § 285;
6. Award costs for this law suit; and

1 7. Award Kilopass any other relief as the Court may deem appropriate and just under the
2 circumstances.

3 **DEMAND FOR JURY TRIAL**

4 Pursuant to Fed. R. Civ. P. 38(b), Plaintiff Kilopass Technology, Inc., hereby demands a trial
5 by jury of all issues so triable.

6 Dated: May 14, 2010

GREENBERG TRAURIG, LLP

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8 By: _____


 J. James Li
 Attorneys for Plaintiff,
 KILOPASS TECHNOLOGY, INC.